

**STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF MEDICAL SERVICES**

**Consultant Contract
For Consultant Services
Between**

State of South Dakota
Department of Social Services
Division of Medical Services
700 Governors Drive
Pierre, SD 57501-2291

Referred to as Consultant

Referred to as State

The State hereby enters into a contract for consultant services with the Consultant. While performing services hereunder, Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. CONSULTANT'S South Dakota Vendor Number is .
2. PERIOD OF PERFORMANCE:
This Agreement shall be effective as of June 1, 2013 and shall end on May 31, 2014, unless sooner terminated pursuant to the terms hereof.
3. WILL THE CONSULTANT USE STATE EQUIPMENT, SUPPLIES, OR FACILITIES?
No.
4. PROVISIONS:
 - A. The Purpose of this Consultant contract:
 - B. The Consultant agrees to perform the following services (add an attachment if needed.):
 - C. The State agrees to:
 1. Make payment for services upon satisfactory completion of services and receipt of bill. Payment will be in accordance with SDCL 5-26.
 2. Will the State pay Consultant expenses as a separate item?
YES () NO (X)
If YES, expenses submitted will be reimbursed as identified in this agreement.
 3. The **TOTAL CONTRACT AMOUNT** will not exceed \$.

5. BILLING:

Consultant agrees to submit a bill for services within (30) days following the month in which services were provided. Consultant will prepare and submit a monthly bill for services. Consultant agrees to submit a final bill within 45 days of the contract end date to receive payment for completed services. If a final bill cannot be submitted in 45 days, then a written request for extension of time and explanation must be provided to the State.

6. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Consultant and to assist in the correction of problem areas identified by the State's monitoring activities

7. LICENSING AND STANDARD COMPLIANCE:

The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.

8. ASSURANCE REQUIREMENTS:

The Consultant agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Debarment and Suspension, Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Charitable Choice Provisions and Regulations, and American Recovery and Reinvestment Act of 2009 as applicable.

9. RETENTION AND INSPECTION OF RECORDS:

The Consultant agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Consultant shall retain such records for six years following termination of this agreement. If such records are under pending audit, the Consultant agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Consultant's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Consultant's established record retention policies.

All payments to the Consultant by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this contract shall be returned to the State within thirty days after written notification to the Consultant.

10. WORK PRODUCT:

Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, agreements, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Consultant in connection with its performance under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State.

Papers, reports, forms or other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong

to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

11. TERMINATION:

This Agreement may be terminated by the State upon thirty (30) days written notice. This agreement may be terminated by the Vendor for cause with the cause explained by the Vendor in writing and upon one hundred and eighty (180) days written notice. The Vendor is obligated to give the State one hundred and eighty (180) days written notice in the event the Vendor intends not to renew the contract or intends to raise any fees or costs associated with the Vendor's products or services in a subsequent contract unless such fees or costs have previously been negotiated and included in this contract. In the event the Vendor breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. Upon notice of termination of a contract or upon reaching the end of the term of this contract unless the contract is renewed, the State of South Dakota requires that State applications that store information to repositories not hosted on the State's infrastructure require the vendor before termination (whether initiated by the State or the Vendor) to extract the State's information such that the State is able to load the information onto\into repositories listed in the State's Standards. If the information cannot be extracted in a format that allows the information to be loaded onto or into the State's Standard repositories the information (metadata (data structure descriptions) and data) will be extracted into a text file format and returned to the State. Upon the effective date of the termination of the agreement the State of South Dakota again requires that State applications that store information to repositories not hosted on the State's infrastructure require the vendor before termination (whether initiated by the State or the Vendor) to extract the State's information such that the state is able to load the information onto or into repositories listed in the State's Standards. If the information cannot be extracted in a format that allows the information to be loaded onto or into the State's Standard repositories the information (metadata (data structure descriptions) and data) will be extracted into a text file format and returned to the State. If termination for such a default is effected by the State, any payments due to Vendor at the time of termination may be adjusted to cover any additional costs to the State because of Vendor's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. In the event of termination or at the end of the term of this contract unless the contract is renewed, the Vendor shall deliver to the State all reports, plans, specifications, technical data, and all other information completed prior to the date of termination. If after the State terminates for a default by Vendor it is determined that Vendor was not at fault, then the Vendor shall be paid for eligible services rendered and expenses incurred up to the date of termination. The terms of this provision were arrived at after negotiation between the parties. This provision is the joint product or work of the parties, and not a provision written or demanded by any one party to this agreement. The Vendor recognizes and agrees, however, that the State of South Dakota cannot enter into an agreement providing for hosting of any of its data on the Vendor's servers and networks without provisions protecting its ability to access and recover its data in a usable, non-proprietary format in the event of termination of this contract with sufficient time to convert that data and the business functions provided by the Vendor to another system and vendor.

12. FUNDING:

This Contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Contract will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

13. AMENDMENTS:

This Contract may not be assigned without the express prior written consent of the State. This Contract may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

14. CONTROLLING LAW:

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Contract are superseded by the terms of this Contract, and except as specifically provided herein, this Contract constitutes the entire agreement with respect to the subject matter hereof.

16. SEVERABILITY:

In the event that any provision of this Contract shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

17. NOTICE:

Any notice or other communication required under this Contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

18. SUBCONTRACTORS:

The Consultant may not use subcontractors to perform the services described herein without express prior written consent from the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Contract, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Contract. The Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

19. HOLD HARMLESS:

The Consultant agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

20. INSURANCE:

Before beginning work under this Contract, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. The Consultant, at all times during the term of this Contract, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

Consultant shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Contract or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

Consultant shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

Consultant shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

Consultant agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

(Medical Health Professional shall maintain current general professional liability insurance with a limit of not less than one million dollars for each occurrence and three million dollars in the aggregate. Such insurance shall include South Dakota state employees as additional insureds in the event a claim, lawsuit, or other proceeding is filed against a state employee as a result of the services provided pursuant to this Contract. If insurance provided by Medical Health Professional is provided on a claim made basis, then Medical Health Professional shall provide "tail" coverage for a period of five years after the termination of coverage.)

21. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Consultant certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Contract or it principals become subject to debarment, suspension of ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

22. CONFLICT OF INTEREST:

Consultant agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain.

23. REPORTING PROVISION:

Consultant agrees to report to the State any event encountered in the course of performance of this Contract which results in injury to any person or property, or which may otherwise subject Consultant, or the State of South Dakota or its officers, agents or employees to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

24. CONFIDENTIALITY OF INFORMATION:

For purposes of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. Consultant agrees to return all information received from the State to State's custody upon the end of the term of this contract, unless otherwise agreed in a writing signed by both parties. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to

Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, as well as 12-4-9, 22-30A-3.2, 22-40-9, SDCL 28-1-68, SDCL 28-1-29, and SDCL 28-1-32 and agrees to immediately notify the State if the information is disclosed, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

25. CHANGE MANAGEMENT PROCESS:

From time to time it may be necessary or desirable for either the State or the Contractor to propose changes in the Services provided. Such changes shall be effective only if they are in writing and contain the dated signatures of authorized representatives of both parties. Unless otherwise indicated, a change or amendment shall be effective on the date it is signed by both parties. Automatic upgrades to any software used by the Contractor to provide any services that simply improve the speed, efficiency, reliability, or availability of existing services and do not alter or add functionality, are not considered "changes to the Services" and such upgrades will be implemented by the Contractor on a schedule no less favorable than that provided by the Contractor to any other customer receiving comparable levels of services.

26. ENTIRE AGREEMENT:

The RFP response including its appendixes and this Agreement, and the exhibits annexed hereto, together with the Statements of Work issued from time to time hereunder, constitute the entire agreement between the parties. If this contract and the RFP response are in conflict in any part the contract will be held to be the preeminent document for the part in disagreement. No change, waiver, or discharge hereof shall be valid unless it is in writing and is executed by the party against whom such change, waiver, or discharge is sought to be enforced.

27. HOST STAFF:

The Contractor will ensure that employees or agents who perform work under this Agreement have read, understood, and received appropriate instruction as to how to comply with the security provisions of this Agreement and have undergone all background screenings, and possess all qualifications required by the State prior to being granted access to source code, State data, or facilities which house State systems.

28. ASSIGNMENT :

This Agreement and the rights and obligations hereunder may not be assigned by either party without the prior written consent of the other party, which will not be unreasonably delayed or withheld. Any attempted assignment without such consent shall be void. Any subcontractors at any tier used to help fulfill the Consultant's obligations under this Agreement must be obligated to comply with the same terms and conditions regarding data handling and protection. The Consultant also agrees to take reasonable steps including, but not limited to, all steps explicitly required elsewhere in this agreement and all other steps as are reasonable under the circumstances to ensure that its employees or agents actions or omissions do not cause a breach of the terms of this agreement.

29. SECURITY:

The Vendor shall take all actions necessary to protect state information from exploits, inappropriate alterations, access or release, and malicious actor attacks. By signing this contract, the Vendor warrants that:

- All known security issues are resolved.

- Assistance will be provided to the State of South Dakota by the Vendor in performing an investigation to determine the nature of any security issues that are discovered or are reasonably suspected after acceptance. This investigation can include security scans made at the State's discretion. Failure by the Vendor to remedy any security issues discovered can be considered a breach of this contract by the State.

30. DISASTER RECOVERY:

The Contractor will maintain a disaster recovery plan (the "Disaster Recovery Plan") with respect to the services provided to the State. For purposes of this Agreement, a "Disaster" shall mean any unplanned interruption of the operation of or inaccessibility to the Contractor's service in which the Contractor, using reasonable judgment, requires relocation of processing to a recovery location. The Contractor shall notify the State as soon as possible after the Contractor deems a service outage to be a Disaster. The Contractor shall move the processing of the State's services to a recovery location as expeditiously as possible and shall coordinate the cut-over. During a disaster, optional or on-request services shall be provided by the Contractor only to the extent adequate capacity exists at the recovery location and only after stabilizing the provision of base services.

31. AUDIT:

Allow State, at Consultant's expense, a security audit and vulnerability assessment to provide third party verification of Consultant's IT security safeguards for the system and its data. The State can request to review independent audit reports that document the system's security posture. This security audit and vulnerability assessment must come from a third party source.

32. BROWSER:

The contractor agrees to provide compatibility access to the current system version through Safari, Firefox and Internet Explorer browsers.

33. FACILITIES INSPECTION:

The Contractor grants authorized state and/or federal personnel access to inspect their systems, facilities, work areas, contractual relationships with third parties involved in supporting any aspects of the hosted system, and the systems which support/protect the hosted system. This access will be granted on 24 hour notice. Such personnel will be limited to staff authorized by the state or the federal government to audit the system, and representatives of the state entity that funds the hosting. The state accepts that access will be arranged with an escort, and the Contractor commits that the escort will have the access and authority to provide physical access to facilities, answer appropriate questions, and provide requested documentation, including but not limited to executed contract terms, operating procedures, records of drills and tests, evidence of background checks, security logs, and any other items required by state or federal audit requirements or as deemed by the state to be required to demonstrate the Contractor is complying with all contract terms.

34. REDUNDANT POWER AND COOLING TO ALL HARDWARE:

The Contractor will provide documentation and, at the discretion of the state, allow for on-site inspections as needed to demonstrate all facilities supporting the application have adequate redundant power and cooling capacity to operate uninterrupted, and without the need to refuel generators, for not less than 24 hours in the event the local external power fails.

35. UPS BACKUP:

The Contractor will provide documentation and, at the discretion of the state, allow for on-site inspections as needed to demonstrate that all facilities supporting the application have adequate UPS power to carry the systems for not less than 10 minutes, and to protect the system from power fluctuations including, but not limited to, surge, spikes, sags, and instability.

36. RIGHTS AND LICENSE IN AND TO STATE AND END USER DATA:

The parties agree that as between them, all rights including all intellectual property rights in and to State and End User data shall remain the exclusive property of the State, and that the Contractor has a limited, nonexclusive license to use these data as provided in this Agreement solely for the purpose of performing its obligations hereunder. This Agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Agreement.

37. MIGRATION CAPABILITY:

Upon termination or expiration of this Agreement, the Contractor will ensure that all State and End User Data is transferred to the State or a third party designated by the State securely, within a reasonable period of time, and without significant interruption in service, all as further specified in the Technical Specifications provided in the RFP. The Contractor will ensure that such migration uses facilities and methods that are compatible with the relevant systems of the transferee, and to the extent technologically feasible, that the State will have reasonable access to State and End User Data during the transition.

The Contractor will notify the State of impending cessation of its business or that of a tiered provider and any contingency plans in the event of notice of such a failure. This includes immediate transfer of any previously escrowed assets and data and State access to the Contractor's facilities to remove and destroy any State-owned assets and data. The Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the State. The Contractor will provide a fully documented service description and perform and document a gap analysis by examining any differences between its services and those to be provided by its successor. The Contractor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the State. The Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and impact on the State, all such work to be coordinated and performed in advance of the formal, final transition date.

38. HOST FACILITY PHYSICAL SECURITY:

The Contractor will provide documentation and, at the discretion of the state, allow for on-site inspections as needed to demonstrate that all facilities supporting the application have adequate physical security. This includes, at a minimum, centrally administered electronic locks that control entry and exit from all rooms where the hosted system resides. Any door security system must either be connected to the building's power backup system as defined elsewhere or have internal battery power sufficient to last 24 hours in normal usage. Security events for the physical access system must be logged and the logs stored electronically in a secure location in a non-changeable format and must be searchable. Retention on the logs must be not less than 7 years. Log entries must be created for at least: successful entry and exit (indicating whether the access was to enter or exit the room) as well as all security related events such as, doors left open more than 30 seconds, forced entries, failed entry attempts, repeat entries without exit, repeat exits without entry, attempts to access doors for which access was not authorized. The Contractor agrees to provide, at the state's request, full access to search the security logs for any access or security events related to any and all rooms and physical locations hosting the state's system.

39. HOST NETWORK SECURITY:

The Contractor will use industry standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Services under this Agreement.

The Contractor will, at its expense, either conduct or have conducted at least on an annual basis:

- A. An audit of the Contractor's security policies, procedures and controls resulting in the issuance of AT 101 SOC 3 certification or Contractor must be ISO-27001-2005 compliant;
- B. A vulnerability scan, performed by a scanner approved by the State, of the Contractor's systems and facilities that are used in any way to deliver services under this Agreement; and
- C. A formal penetration test, performed by a process and qualified personnel approved by the State, of the Contractor's systems and facilities that are used in any way to deliver services under this Agreement.

40. LEGAL REQUESTS FOR DATA:

Except as otherwise expressly prohibited by law, the Contractor will:

- A. Immediately notify the State of any subpoenas, warrants, or other legal orders, demands or requests received by the Contractor seeking State and/or End User Data maintained by the Contractor;
- B. Consult with the State regarding its response;
- C. Cooperate with the State's requests in connection with efforts by the State to intervene and quash or modify the legal order, demand or request; and
- D. Upon the State's request, provide the State with a copy of both the demand or request and its proposed or actual response.

41. DATA PRIVACY:

- A. The Contractor will use State Data and End User Data only for the purpose of fulfilling its duties under this Agreement and for the State's and its End User's sole benefit, and will not share such data with, or disclose it to, any third party, without the prior written consent of the State or as otherwise required by law. By way of illustration and not of limitation, the Contractor will not use such data for the Contractor's own benefit and, in particular, will not engage in "data mining" of State or End User Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by the State through a State employee or officer specifically authorized to grant such use of State data
- B. All State and End User Data will be stored on servers located solely within the continental United States.
- C. The Contractor will provide access to State and End User Data only to those Contractor employees and subcontractors who need to access the data to fulfill the Contractor's obligations under this Agreement.

42. DATA EXCHANGE AND ENCRYPTED DATA STORAGE:

All facilities used to store and process State and End User data will employ commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure the Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, the Contractor warrants that all State and End User Data will be encrypted in transmission (including via web interface) and storage at no less than 128-bit level encryption.

43. DATA RETENTION AND DISPOSAL:

- A. The Contractor will use commercially reasonable efforts to retain data in an End User's account until the End User deletes them, or for an alternate time period mutually agreed by the parties.
- B. Using appropriate and reliable storage media, the Contractor will regularly back up State and End User Data and retain such backup copies for a minimum of thirty-six months. At the end of that time period and at the State's election, the Contractor will either securely destroy or transmit to the State repository the backup copies. Upon the State's request, the Contractor will supply the State with a certificate indicating the nature of the storage media destroyed, the date destroyed, and the method of destruction used.
- C. The Contractor will retain logs associated with End User activity for a minimum of seven years, unless the parties mutually agree to a different period.
- D. The Contractor will immediately place a "hold" on the destruction under its usual storage media retention policies of storage media that include State and End User Data, in response to an oral or written request from authorized State personnel indicating that those records may be relevant to litigation that the State reasonably anticipates. Oral requests by the State for a hold on storage media destruction will be reproduced in writing and supplied to the Contractor for its records as soon as reasonably practicable under the circumstances. The State will promptly coordinate with the Contractor regarding the preservation and disposition of storage media. The Contractor shall continue to preserve the storage media until further notice by the State. The Contractor will provide documentation and, at the discretion of the State, allow for on-site inspections as needed to demonstrate that all facilities supporting the methods of disposal of storage media, are appropriate to and fulfill all of the State's needs. By way of example but not of limitation, all hard drives and tapes used to store State data must, upon destruction be properly disposed of. These and other media, if used, must be appropriately transferred from one environment to another properly scheduled and

prepared for reuse in any event, acceptable methodologies must be employed for tracking and auditing to insure data security.

44. MULTI-TENANT ARCHITECTURE LOGICALLY/PHYSICALLY SEPARATED TO INSURE DATA SECURITY:

The Contractor will provide documentation and, at the discretion of the State, allow for on-site inspections as needed to demonstrate that all facilities supporting the application have adequate safeguards to assure that needed logical and physical separation is in place and enforced to insure data security, physical security, and transport security.

45. HANDLING OF DATA BREACHES:

Immediately upon becoming aware of a Data Compromise, or of circumstances that could have resulted in unauthorized access to, disclosure of, alternation of, or use of State or End User Data, Contractor will notify the State, fully investigate the incident, and cooperate fully with the State's investigation of, analysis of, and response to the incident. Except as otherwise required by law, the Contractor will not provide notice of the incident directly to the persons whose data were involved, regulatory agencies, or other entities, without prior written permission from the State.

Notwithstanding any other provision of this agreement, and in addition to any other remedies available to the State under law or equity, the Contractor will reimburse the State in full for all costs incurred by the State in investigation and remediation of such Data Compromise, including but not limited to providing notification to third parties whose data were compromised and to regulatory agencies or other entities as required by law or contract; the offering of 12 months' credit monitoring to each person whose data were compromised; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Data Compromise.

46. ACCESS ATTEMPTS:

All access attempts, whether failed or successful, to any system connected to the hosted system which can access, read, alter, intercept, or otherwise impact the hosted system or its data or data integrity shall be logged by the Contractor. For all systems, the log must include at least: log-in page used, username used, time and date stamp, incoming IP for each authentication attempt, and the authentication status, whether successful or not. Logs must be maintained not less than 7 years in a searchable database in an electronic format that is un-modifiable. At the request of the state, access must be granted to search those logs as needed to demonstrate compliance with the terms of this contract, and any and all audit requirements related to the hosted system. The state will agree to non-disclosure of any information gained excepting disclosures to authorized audit entities or as needed in the event of a legal action.

47. PASSWORD POLICIES:

Password policies for all Contractor employees will be documented annually and provided to the state to assure adequate password protections are in place. Logs and administrative settings will be provided to the state annually as needed to demonstrate such policies are actively enforced.

48. LOCATION OF STATE AND END USER DATA

All State and end user data hosted by the contractor will be stored in facilities located in the United States of America. At no time is it acceptable for any State or end user data, when at rest, to be located in facilities outside the United States of America. This restriction also applies to disaster recovery; any disaster recovery plan must provide for data storage entirely within the United States of America.

49. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto. By signing this agreement, the Bureau of Information and Telecommunications (BIT) is representing that as the state's technology governing organization it has reviewed only the technical provisions of this contract.

| | |
|-----------------------------------------------------------------------|---------------|
| _____ Consultant Signature | _____ Date |
| _____ State- DSS Division Director Marilyn Kinsman | _____ Date |
| _____ State – DSS Chief Financial Officer Brenda Tidball-Zeltinger | _____ Date |
| _____ State – BIT Commissioner David Zolnowsky | _____ Date |

State Agency Coding:

| | | | | |
|--------------|-------|-------|-------|-------|
| CFDA # | _____ | _____ | _____ | _____ |
| Company | _____ | _____ | _____ | _____ |
| Account | _____ | _____ | _____ | _____ |
| Center Req | _____ | _____ | _____ | _____ |
| Center User | _____ | _____ | _____ | _____ |
| Dollar Total | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |

DSS Program Contact Person _____
Phone _____

DSS Fiscal Contact Person Patty Hanson
Phone 605 773-3586

Consultant Program Contact Person _____
Phone _____

Consultant Fiscal Contact Person _____
Phone _____

Consultant Email Address _____

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.